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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

ROBERT L. NALDUCCI,)	Case No. C06-7702 SBA
)	E-FILING CASE
Plaintiff,)	
)	STIPULATION REGARDING
v.)	SETTLEMENT AND GENERAL
)	RELEASE AND ORDER
PETE GEREN, Secretary of the Army;)	
)	
Defendant.)	
)	
)	
)	

This Stipulation Regarding Settlement and General Release (“Agreement”), is entered into by and between Robert L. Nalducci (“Plaintiff”) and the Pete Geren, Secretary of the Army (“Defendant”), collectively referred to as the “Parties.”

WHEREAS Plaintiff and Defendant wish to avoid any further litigation and controversy and to settle and compromise fully any and all claims and issues that have been raised, or could have been raised, arising out of Plaintiff's employment with Defendant, which have transpired prior to the execution of this Agreement, and

WHEREAS Plaintiff has filed an action in the United States District Court, Northern District of California, Docket No. C 06-7702 SBA entitled, *Robert Nalducci v. Pete Geren*,

1 *Secretary of the Army;*

2 WHEREAS this settlement agreement between the Plaintiff and the Defendant,
3 specifically covers the waiver of any Age Discrimination in Employment Act (ADEA) 29 U.S.C.
4 623, *et seq.*, claims raised by Mr. Nalducci in his Complaint filed in United States District Court
5 for the Northern District of California under civil action number C-06-7702 SBA. Mr. Nalducci
6 is waiving any and all ADEA claims that are raised in his complaint or that may arise from the
7 incidents alleged in his complaint. Mr. Nalducci agrees to waive his ADEA rights and claims
8 that occurred in his employment relationship with the Army up to the date this waiver is
9 executed, but not the waiver of claims that might arise in the future. 29 U.S.C. § 626(f)(1)(C).
10 Mr. Nalducci is waiving his ADEA claims in exchange for the valuable consideration outlined
11 below, to which he is not otherwise entitled, per the ADEA. 29 U.S.C. § 626(f)(1)(D).

12 WHEREAS Mr. Nalducci is advised to consult with his attorney prior to executing this
13 settlement agreement. Mr. Nalducci is granted a period of twenty-one calendar (21) days to
14 consider this settlement agreement before signing it. 29 U.S.C. § 626(f)(1)(F)(i). Should the
15 parties execute the instant settlement agreement, either party may revoke this agreement within
16 seven (7) calendar days following the execution of this settlement agreement. Any such
17 revocation shall be in writing and shall be provided promptly to the other party and/or the other
18 party's attorney. The agreement shall become effective seven days after its execution by all of
19 the signatories below. 29 U.S.C. § 626 (f)(1)(G).

20 NOW, THEREFORE, in consideration of the mutual promises contained in this
21 Agreement, and other good and valuable consideration, receipt of which is hereby
22 acknowledged, and to avoid unnecessary litigation, the Parties agree as follows:

23 1. After full and open discussion, the Parties hereby release and forever discharge
24 the other, their past and present respective officers, agents, and employees, from any and all
25 claims, demands, suits, rights, damages, union grievances, charges, administrative remedies
26 (including but not limited to Merit System Protection Board or Equal Employment Opportunity
27 Commission filings), and causes of action of any and every kind, nature, and character, known
28 and unknown, which the Parties may now have or has ever had against the other, or any of their

1 officers, agents, and employees, which arose in whole or in part from Plaintiff's employment
2 relationship with the Defendant, and which are based upon incidents, occurrences, or actions
3 taking place prior to the execution of this Agreement ("Claims").

4 2. This Agreement shall not in any way be construed as an admission by either party
5 that it has acted wrongfully with respect to the other, that there was any liability or wrongdoing
6 on the part of either party and the Parties specifically disclaim any liability to or wrongful acts
7 against the other on the part of their officers, agents or employees. Nothing herein is intended to
8 be construed as an adjudication of the merits of any factual or legal issue in this lawsuit or in any
9 administrative proceeding. Further, nothing in this Agreement shall constitute an admission of
10 liability or fault on the part of the Plaintiff or the Defendant or any of their past or present
11 officials, agents, attorneys, or employees or any of their successors or assigns. Rather, this
12 Agreement is entered into by the Parties for the purpose of compromising disputed Claims and
13 avoiding the expenses and risks of litigation. The Parties agree that the terms of this Agreement
14 are binding only on the Parties themselves and are based on specific circumstances related to this
15 matter alone. The Parties further agree that this Agreement will not be regarded as a precedent,
16 and may not be used, cited, or compared by any person, except Plaintiff and the Defendant, for
17 any purposes, against the Plaintiff or the Defendant or their past or present officials, agents,
18 employees, attorneys, or any of their successors or assigns.

19 3. The Defendant agrees to pay the sum of Eighty Thousand dollars and no cents
20 (\$80,000.00) to Plaintiff, the Law Offices of Daniel Bartley, and the Law Offices of James D.
21 Rush jointly under the terms and conditions set forth herein. The Defendant will complete an
22 electronic funds transfer of the sum of Eighty Thousand dollars and no cents (\$80,000) to Chase
23 Bank Account number 4414147565, Routing number: 322271627, which Defendant is informed
24 is the client trust account for James Rush, Esq. The sum of Eighty Thousand dollars and no
25 cents (\$80,000.00) reflects the entire monetary amount due Plaintiff his heirs, executors,
26 administrators, assigns, and attorneys from the Defendant, and the Parties further agree that
27 Plaintiff and Defendant shall each bear their own costs, fees, interest and expenses and that any
28 attorney's fees or costs owed by Plaintiff will be paid out of the settlement amount of \$80,000

1 and not in addition thereto. The Defendant shall make best efforts to issue the settlement check
2 within 90 days of full execution of this agreement.

3 4. The Parties expressly acknowledge that this Agreement is intended to effect,
4 without limitation, a full and final release of all Claims, known or unknown, undisclosed or
5 unanticipated, which may have arisen, or may arise from Plaintiff's employment relationship
6 with the Defendant prior to the date of this Agreement. The Plaintiff acknowledges that different
7 or additional facts may be discovered in addition to what he knows or believes to be true with
8 respect to the Claims released, and that he agrees that this Agreement will remain in effect in all
9 aspects as a full and final release of the Claims, notwithstanding different or additional facts.

10 5. Plaintiff specifically agrees, as additional consideration for this Agreement, to
11 waive the provisions of California Civil Code Section 1542 set forth below:

12 A general release does not extend to claims which the creditor does not
13 know or suspect to exist in his favor at the time of executing the release,
14 which if known by him must have materially affected his settlement with
15 the debtor.

16 The Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by his
17 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and
18 all rights he may have pursuant to the provision of that statute and any similar provision of
19 federal law. The Plaintiff understands that if the facts concerning the Plaintiff's injury and the
20 liability of the Defendant, or its directors, officers, agents, servants, or employees, attorneys or
21 any of their successors or assigns for damages pertaining thereto or found hereafter to be other
22 than or different from the facts now believed by him to be true, this Agreement shall be and
23 remain effective notwithstanding such material difference.

24 6. Plaintiff represents that he is the sole possessor of the Claims being released and
25 that he has not assigned or otherwise transferred any Claims. Further, Plaintiff understands and
26 agrees that this Agreement shall bind and be binding upon his heirs, personal representatives,
27 spouse, executors, administrators and assigns, and shall inure to the benefit of their agents,
28 employees, servants, and successors.

7. Plaintiff agrees that at no time subsequent to the date of this Agreement will he

1 commence, maintain, or prosecute any action, at law or otherwise, or assert any Claim against
2 the Defendant released, and/or execute or enforce any judgment against the Defendant released,
3 for damages, losses or for equitable relief related to the Claims released.

4 8. Plaintiff specifically acknowledges, agrees, and understands that, by signing this
5 Agreement he is waiving any Claims (as defined above) for back pay, front pay, attorneys fees,
6 costs, interest, pain and suffering, lost benefits and promotional opportunities, emotional distress
7 and all other pecuniary and non-pecuniary compensatory damages or other relief that have been
8 or could have been claimed in any proceeding alleging employment discrimination by the
9 Defendant.

10 9. This Agreement shall be interpreted in accordance with the plain meaning of its
11 terms and not strictly for or against any of the Parties.

12 10. The Parties agree that should any provision of this Agreement be declared or
13 determined by any court to be illegal, invalid or unenforceable, the remainder of the Agreement
14 shall nonetheless remain binding and in effect.

15 11. This Agreement constitutes the full and complete agreement between the Parties
16 and fully supersedes any and all prior agreements or understandings between the Parties
17 pertaining to the subject matter of this Agreement. There are no oral side agreements or
18 understandings. No other promises or agreements shall be binding unless signed by the Parties.
19 Further, this instrument shall constitute the entire agreement between the Parties, and it is
20 expressly understood and agreed that this Agreement has been freely and voluntarily entered into
21 by the Parties hereto with the advice of counsel, who have explained the legal effect of this
22 Agreement. The Parties further acknowledge that no warranties or representations have been
23 made on any subject other than as set forth in this Agreement.

24 12. This Agreement may be pled as a full and complete defense to any action or other
25 proceeding, including any local, state or federal administrative action, involving any person or
26 party that arises out of the claims released and discharged by this Agreement.

27 13. If any withholding or income tax liability is imposed upon Plaintiff based on
28 payment of the settlement sum as set forth herein, Plaintiff shall be solely responsible for paying

1 any such liability. Plaintiff, and his attorneys, will indemnify and hold harmless the Defendant
2 from any liability the Defendant may incur from any government agency arising out of any
3 failure by Plaintiff to pay any tax liability he might be responsible for from any government
4 agency.

5 14. The Parties hereby agree to indemnify and hold the other harmless from and
6 against any and all loss, cost, damage or expense including, without limitation, attorneys' fees,
7 incurred by or arising out of any such action, suit or other proceeding prosecuted or attempted by
8 the Parties in breach of this Agreement.

9 15. Plaintiff represents and agrees that he is of legal age and mentally competent to
10 execute this Agreement and fully understands his right to discuss this Agreement with his
11 attorney; that to the extent, he has availed himself of this opportunity; that he has carefully read
12 and fully understands all the provisions of this Agreement; and that he is voluntarily entering
13 into this Agreement with full understanding of its legal consequences and without any duress or
14 pressures.

15 16. Each party acknowledges that they have been represented by and have relied upon
16 independent counsel in negotiating, preparing and entering into this Agreement and that they
17 have had the contents of this Agreement fully explained by counsel and that they are fully aware
18 of and understand all of the terms of the Agreement and the legal consequences thereof. It is
19 further acknowledged that the Parties have mutually participated in the drafting of this
20 Agreement and it is agreed that no provision herein shall be construed against any party hereto
21 by virtue of the drafting of this Agreement.

22 17. Under the Older Workers Benefit Protection Act, Plaintiff acknowledges that he
23 has up to twenty-one (21) calendar days from the date he receives this Agreement to review and
24 consider this Agreement, discuss it with an attorney of his own choosing, and decide to sign it or
25 not sign it, although he may accept and return it to Defendant's counsel at any time within those
26 twenty-one (21) days. Plaintiff is advised to consult his attorney about the Agreement.

27 18. Once Plaintiff signs and dates this Agreement, he will have seven (7) days from
28 the date he signs the Agreement in which to revoke his acceptance. To revoke, Plaintiff must

send a written statement of revocation, which should be mailed and faxed to:

Kathleen M. Sato
Assistant District Counsel
Office of Counsel
U.S. Army Corps of Engineers, San Francisco District
1455 Market St., Ste. 1665,
San Francisco, CA 94103
(415) 503-6686 (fax)

Plaintiff understands that if he revokes, this Agreement shall have no effect. If Plaintiff does not revoke, this Agreement will become effective on the eighth (8th) day ("the Effective Date") after the date Plaintiff signs and dates this Agreement.

19. This Agreement may not be altered, modified, or otherwise changed in any respect except in writing, duly executed by all of the Parties or their authorized representatives.

20. The Parties agree that the District Court shall retain jurisdiction over this matter for the purposes of resolving any dispute alleging a breach of this Agreement. The Parties also agree to consent to a magistrate judge to resolve any dispute alleging breach of this agreement.

21. This Agreement may be signed in counterparts.

SO AGREED.

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

S/ Melissa Brown (signature on file)

Dated: June 19, 2009

ANDREW Y.S. CHENG
MELISSA K. BROWN
Assistant United States Attorneys

S/ Robert Nalducci (signature on file)

Dated: June 17, 2009

ROBERT NALDUCCI, Plaintiff

S/ Daniel Bartley (signature on file)

Dated: June 17, 2009

DANIEL BARTLEY,
Attorneys for Plaintiff

S/ James Rush (signature on file)

Dated: June 17, 2009

JAMES RUSH
Attorneys for Plaintiff

ORDER

Pursuant to the Parties' Stipulation Regarding Settlement And General Release, IT IS SO
ORDERED.

Dated: 7/6/09


SAUNDRA BROWN ARMSTRONG
United States District Court Judge